

Supreme Court U.S.

05-761 NOV 30 2005

No. or THE CLERK

IN THE
Supreme Court of the United States

Kenneth F. Deyo Jr.,
Petitioner,

v.

Commissioner of Revenue Services,
Respondent

On Petition For Writ Of Certiorari
To The Appellate Court Of Connecticut

PETITION FOR WRIT OF CERTIORARI

Kenneth F. Deyo Jr.
29 Longmeadow Drive
Wolcott, CT 06716
(203) 879-7174

The Connecticut state income tax system is related to the federal income tax system in that the starting point for determining an individual's Connecticut income tax liability is the determination of "adjusted gross income" as defined by Connecticut General Statutes section 12-701(a)(19) which states "Adjusted gross income" means the adjusted gross income of a natural person with respect to any taxable year, as determined for federal income tax purposes and as properly reported on such person's federal income tax return.¹

QUESTIONS PRESENTED

- 1) Do this Court's numerous decisions concerning federal tax statutes, which state that "In the interpretation of statutes levying taxes it is the established rule not to extend their provisions, by implication, beyond the clear import of the language used, or to enlarge their operations so as to embrace matters not specifically pointed out", also apply to state tax statutes by virtue of the Fourteenth Amendment to the United States Constitution?
- 2) If federal authorities have not assessed federal income tax and have not made a determination of an individual's federal adjusted gross income, are state government officials acting outside of their authority when making a determination of "the adjusted gross income of a natural person with respect to any taxable year, as determined for federal income tax purposes and as properly reported on such person's federal income tax return"?
- 3) Does the Fourteenth Amendment to the United States Constitution require a state to strictly adhere to state statutory provisions which make the state's taxing power dependent on the federal tax system even though the state's constitution contains no such dependency?

TABLE OF CONTENTS

| | |
|--|----------|
| OPINIONS BELOW | 1 |
| JURISDICTION | 1 |
| Constitutional provisions involved:..... | 1 |
| Connecticut statutes involved:..... | 1 |
| STATEMENT OF THE CASE | 2 |
| Facts..... | 3 |
| Proceedings Below | 4 |
| REASONS FOR GRANTING THE WRIT..... | 8 |
| I. This Court's previous rulings concerning tax statutes | 11 |
| II. Connecticut's income tax imposition statutes | 13 |
| III. Legislative history of C.G.S. section 12-701(a)(19)..... | 16 |
| IV. Connecticut General Statutes section 12-735(b)..... | 21 |
| V. The courts have no function of legislation | 23 |
| VI. Conclusion..... | 27 |
| APPENDIX | |

TABLE OF AUTHORITIES

Connecticut General Statutes

| | |
|--------------------|---|
| 12-700 | 14, 15 |
| 12-701(a)(19)..... | 1-5, 7, 9, 10, 13, 15-20, 22, 24, 26-28 |
| 12-701(a)(20)..... | 7, 14, 15 |
| 12-701(a)(8)..... | 7, 14, 15 |

Connecticut Senate floor remarks

| | |
|--|----------------|
| Senator Looney, Public Act No. 01-6..... | 17, 19, 26, 27 |
|--|----------------|

Conn. Department of Revenue Services documents

| | |
|--------------------|------------------------------|
| Form CT-1040 | 3, 6, 10, 18, 19, 22, 23, 26 |
|--------------------|------------------------------|

U.S. Constitution

| | |
|----------------------------|----------------------|
| Fourteenth Amendment | 1, 8, 13, 23, 24, 28 |
|----------------------------|----------------------|

U.S. Supreme Court cases

| | |
|--|----------------------|
| Chicago B. & Q. R. Co. v. City of Chicago, 166 U.S. 226 .. | 23 |
| Commissioner v. Korell, 339 U.S. 619..... | 12, 25 |
| Crane v. Commissioner, 331 U.S. 1 | 13 |
| Gitlitz v. Commissioner, 531 U.S. 206..... | 25 |
| Gould v. Gould, 245 U.S. 151 | 6, 8, 12, 21, 25, 28 |
| Gregory v. Helvering, 293 U.S. 465 | 23 |
| Hanover Bank v. Commissioner, 369 U.S. 672..... | 13, 24, 25 |
| Hassett v. Welch, 303 U.S. 303 | 6, 12, 21 |
| U.S. v. Goldenberg, 168 U.S. 95 | 9, 11, 27, 28 |
| White v. Aronson, 302 U.S. 16..... | 12, 21 |

Federal statutes

| | |
|-----------------------------------|-----------------|
| U.S.C. Title 26 section 6020..... | 3, 8, 9, 24, 26 |
|-----------------------------------|-----------------|

OPINIONS BELOW

The decision of the Supreme Court of Connecticut denying the petitioner's petition for certification is reported at 275 Conn. 912. The decision of the Appellate Court of Connecticut affirming the trial court's dismissal of the petitioner's appeal is reported at 89 Conn. App. 903. The decision of the Connecticut Superior Court, Judicial District of New Britain Tax Session, is unpublished and the title and number of the case is Kenneth F. Deyo, Jr. v. Pamela Law, Commissioner of Revenue Services. 2004 Ct. Sup. 14715, 38 CLR 28, Docket No. CV 03 052 4331. All of these decisions are included in their entirety in the appendix to this petition.

JURISDICTION

On September 12, 2005, the Supreme Court of Connecticut denied the petitioner's timely petition for certification. The judgment sought to be reviewed was entered on September 27, 2004. This Court has jurisdiction pursuant to 28 U.S.C. Section 1257(a) and the Fourteenth Amendment to the United States Constitution.

Constitutional provisions involved:

The Fourteenth Amendment to the United States Constitution provides, in relevant part:

No state shall ... deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Connecticut statutes involved:

Connecticut General Statutes section 12-701(a)(19) states:

"Adjusted gross income" means the adjusted gross income of a natural person with respect to any taxable year, as determined for federal income tax purposes and as properly reported on such person's federal income tax return.

Connecticut General Statutes section 12-735(b) states:

If any person has not made a return within three months after the time specified under the provisions of this chapter, the commissioner may make such return at any time thereafter, according to the best information obtainable and according to the form prescribed.

STATEMENT OF THE CASE

This action challenges the authority of Connecticut state officials to make a non-zero determination of a Connecticut resident's "adjusted gross income", as defined by Connecticut General Statutes section 12-701(a)(19), when there exists no federal income tax return for the tax year in question. The petitioner contends that the plain words of the statute and its legislative history clearly indicate that the state's income tax system is wholly dependent upon federal adjusted gross income and that the amount determined under section 12-701(a)(19) must be that which is actually reported on a federal income tax return.

It is the petitioner's position that due process requires the State to abide by the statutory limits on the State's taxing power and that the amount used for an individual's "adjusted gross income" must strictly adhere to the statutory definition at section 12-701(a)(19). The statute states in plain language that the amount must be that which is properly reported on the individual's federal income tax return. The petitioner contends that the State's income tax system is dependent upon the federal income tax system through the application of section 12-701(a)(19) and that Connecticut state officials do not have authority to properly determine an individual's federal adjusted gross income absent a determination of such by federal authorities.

The Connecticut courts have in effect ruled that statutory limits on the State's taxing power need not be adhered to because the state constitution imposes no such limits.

Because the state constitution does not tie the State's power to tax incomes to the federal government's power to tax incomes, the state courts have ruled that the State's income tax system is not inextricably tied to the federal income tax system. However, the State's statutes do not point out the methodology to be used to determine a state taxpayer's "adjusted gross income" when there is no federal income tax return in which to refer to. The Connecticut courts have ruled that state officials may make their own determinations of "the adjusted gross income of a natural person with respect to any taxable year, as determined for federal income tax purposes and as properly reported on such person's federal income tax return" when neither the federal authorities nor the individual has made a federal income tax return.

Facts

Whether properly or not, the petitioner determined that the income he received in 2001 was excluded for federal income tax purposes and consequently he did not file a 2001 federal income tax return. Federal officials had not made a federal income tax return under authority of U.S.C. Title 26 section 6020 nor had they assessed a 2001 federal income tax liability against the petitioner. Consequently, no federal income tax return existed for the petitioner for the 2001 tax year.

Because the petitioner did not file a Connecticut income tax return, the Connecticut Commissioner of Revenue Services (Commissioner) made a Connecticut income tax return for the petitioner, allegedly under the authority of Conn. Gen. Stat. section 12-735(b). The amount used by the Commissioner on line 1 of form CT-1040 was not a number that was reported on a federal income tax return.

The Connecticut Department of Revenue Services (DRS) assessed a Connecticut income tax liability against the petitioner for the 2001 tax year by using a number for the petitioner's "adjusted gross income", which is defined by section 12-701(a)(19), which was not an amount that was

reported on ~~any~~ federal income tax return of the petitioner, nor was it ~~a~~ amount that was used for purposes of calculating the petitioner's federal income tax liability.

Proceedings Below

In all of the proceedings below, the petitioner raised the issue of whether the state's income tax system is dependent upon the federal income tax system and whether state officials have the authority to determine an individual's federal adjusted gross income under C.G.S. section 12-701(a)(19) when federal authorities have not yet made such a determination. The issues were raised by the petitioner during the trial court hearing, in his Plaintiff's Post-Trial Memorandum of Law, dated August 27, 2004, in his Motion for Reargument or Alteration of Decision, dated October 13, 2004, in his Plaintiff's Memorandum in Support of Motion for Reargument or Alteration of Decision, dated October 26, 2004, in his Appellate Court Brief and Appendix for the Plaintiff-Appellant, during Appellate Court oral hearing, and in his Petition for Certification to the Supreme Court of Connecticut, dated July 13, 2005.

As an example of the manner in which the issues were raised, the first page of the Plaintiff's Post-Trial Memorandum of Law stated the following:

In assessing a Connecticut income tax liability against the Plaintiff for 2001, the Department of Revenue Services violated sections 12-701(a)(19) and 12-735(b) of the Connecticut General Statutes. Section 35 of Public Act No. 01-6 reads as follows (emphasis added):

Sec. 35. Subdivision (19) of subsection (a) of section 12-701 of the general statutes is repealed and the following is substituted in lieu thereof:

(19) "Adjusted gross income" means the adjusted gross income of a natural person with respect to any taxable year, as determined for federal income tax

purposes and as properly reported on such person's federal income tax return.

Sections 12-701(a)(19) and 12-735(b) both require the Department to use the number for federal adjusted gross income as reported on Plaintiff's federal income tax return. The statutes do not authorize the Department to make its own determination of Plaintiff's adjusted gross income as determined for federal income tax purposes. The Department unlawfully made its own determination of Plaintiff's federal adjusted gross income. The Department did not use the number reported on Plaintiff's federal income tax return. The Department's action was in violation of the clear wording of the statutes. The Department's action was also in violation of the legislative intent of section 12-701(a)(19) as revised by Public Act No. 01-6.

Conn. Gen. Stat. section 12-701(a)(19) was revised by Public Act No. 01-6 by adding the words "and as properly reported on such person's federal income tax return." The statute was revised in order to prevent the Department and the Connecticut courts from making their own determinations of federal adjusted gross income. The number that is used for Plaintiff's federal adjusted gross income must be the number which is reported on Plaintiff's federal income tax return. The Department and the Connecticut courts have no lawful authority to make their own determinations of Plaintiff's adjusted gross income as determined for federal income tax purposes.

Additionally, page 14 of the Plaintiff's Post-Trial Memorandum of Law stated the following:

Conn. Gen. Stat. Section 12-735(b) also requires the DRS to use the number for federal AGI as reported on

the federal income tax return. A return made by the Commissioner under authority of section 12-735(b) must be made "*according to the form prescribed.*" The entry on line 1 of Form CT-1040 must come from federal AGI as reported on federal Form 1040.

Only federal courts have authority to determine what amount is properly reported as federal AGI on a federal income tax return. Only the Secretary of the Treasury of the United States or his delegate has authority to prepare and sign a federal income tax return against Plaintiff. Only federal courts have jurisdiction to determine whether the taxpayer or the Secretary has reported federal AGI properly on the federal income tax return.

In both his trial court and appellate court briefs and in his petition for certification to the state supreme court, the petitioner included the following citations from this Court:

Gould v. Gould, 245 U.S. 151, p. 153:

In the interpretation of statutes levying taxes it is the established rule not to extend their provisions, by implication, beyond the clear import of the language used, or to enlarge their operations so as to embrace matters not specifically pointed out. In case of doubt they are construed most strongly against the government, and in favor of the citizen.

Hassett v. Welch, 303 U.S. 303, p. 314:

... if doubt exists as to the construction of a taxing statute, the doubt should be resolved in favor of the taxpayer ...

Only the trial court issued substantive reasons for its decision and the memorandum of decision is presented in its entirety in the appendix to this petition at pages A1 through A5. The Superior Court has ruled that Connecticut's income tax system is completely independent of the federal income

tax system and that the Commissioner can make her own determination of an individual's federal adjusted gross income for purposes of section 12-701(a)(19), regardless of what numbers are reported or not reported on the individual's federal income tax return. The Superior Court's memorandum of decision includes the following:

. . . Our taxing statutes make clear that Connecticut taxable income is not federal taxable income. General Statutes 12-701(a)(8) defines Connecticut taxable income to mean "the Connecticut adjusted gross income of a natural person with respect to any taxable year reduced by the amount of the exemption provided in section 12-702." Connecticut adjusted gross income is defined in 12-701(a)(20) as adjusted gross income modified by income that may be taxable by the state but not taxable by the federal government, or vice versa. Finally, 12-701(a)(19) defines adjusted gross income to mean "the adjusted gross income of a natural person with respect to any taxable year, as determined for federal income tax purposes and as properly reported on such person's federal income tax return." It is the reference in 12-701(a)(19) to a federal income tax return that the petitioner misconstrues in making his argument. Adjusted gross income as reported on an individual's federal income tax return is merely a starting point for determining his or her Connecticut adjusted gross income. . .

. . . We note that General Statutes 12-735(b) provides that if a taxpayer has not filed a state income tax return within the time required by statute, "the commissioner may make such return at any time thereafter, according to the best information obtainable and according to the form prescribed." . . .

. . . The power of the federal government to tax and the power of the state government to tax are not inextricably tied together. They are separate and

distinct taxing powers. *Kellems v. Brown*, 163 Conn. 478, 487, 313 A.2d 53 (1972) appeal dismissed, 409 U.S. 1099, 93 S. Ct. 911, 34 L. Ed. 2d 678 (1973).

The Appellate Court affirmed the Superior Court decision without comment.

REASONS FOR GRANTING THE WRIT

This Court has repeatedly ruled to the effect that "In the interpretation of statutes levying taxes it is the established rule not to extend their provisions, by implication, beyond the clear import of the language used, or to enlarge their operations so as to embrace matters not specifically pointed out. In case of doubt they are construed most strongly against the government, and in favor of the citizen." Gould v. Gould, 245 U.S. 151, 153. The context of these rulings has been concerning controversy over the application of federal tax statutes. The petitioner contends that this rule of taxation also applies to state tax statutes by virtue of Fourteenth Amendment to the United States Constitution.

Action by this Court is needed to ensure that there is a clearly established uniform rule of due process concerning taxation, regardless of whether the controversy arises under the Fifth Amendment or under the Fourteenth Amendment, and regardless of whether the controversy concerns federal taxes or state taxes. This Court needs to explicitly rule that state governments must strictly adhere to the unambiguous words of their own tax statutes. This Court needs to clearly point out that state courts must not expand the operation of the state's tax statutes beyond the provisions of the clear language in an attempt to remedy the legislature's failure to provide for a certain contingency.

Under U.S.C. Title 26 section 6020, the Congress has only given authority to the Secretary of the Treasury of the United States or his delegate to report amounts on an individual's federal income tax return when the individual has